

Michigan Department of Environmental Quality

ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL WEBINAR



Webinar Set Up

- **Moderator:**
Jim Ostrowski
DEQ, Office of Environmental Assistance
- **All lines will be muted**
- **Questions can be sent to us via the question/chat box**
- **We will record webinar and post online**



ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

Webinar Presentation
December 17, 2013



ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL



PRESENTER

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ROAD MAP

- Define authority to use alternate institutional controls.
- Describe categories of road right-of-ways.
- Discuss prior institutional controls used to address contamination in road right-of-ways.
- Provide an overview and discussion of new form.





STATUTORY AUTHORITY FOR ALTERNATE INSTITUTIONAL CONTROLS

➤ Section 20114d(5)(a) of the NREPA

- “...the postclosure agreement may allow for a remedial action under section 20120a(1)(c) or (d) or (2) to rely on an institutional control in lieu of a restrictive covenant in a postclosure plan.”

➤ Section 21310a(4) of the NREPA

- “...if a mechanism other than a notice of corrective action, an ordinance, or a restrictive covenant is requested and the department determines that the alternative mechanism is appropriate, the department may approve of the alternate mechanism.”

PROPERTY RIGHTS AND THE “BUNDLE OF STICKS”

- Landowners have property rights similar to a “bundle of sticks”.
- Landowners can own the entire bundle or sell or trade certain “sticks” to others.
- An easement is a “stick” that conveys an ownership interest in a use of the property without transferring full ownership rights.



TYPES OF EXISTING RIGHT-OF-WAYS

➤ **Fee Right-of-Way**

- Full ownership in the right-of-way property.

➤ **Easement Right-of-Way**

- Ownership of the right to use the right-of-way for a specific purpose, with the grantor retaining the rest of the ownership rights of the property.

➤ **Dedicated Right-of-Way**

- Right-of-way property is designated for use as a street, alley, etc. by a fee owner through subdivision or plat.

➤ **Assessor's and Supervisor's Plat**

- The right-of-way shown on the plat as used by the public may be considered as use or implied dedication by the abutting property owners.

➤ **Statutory Right of Way**

- Road right-of-way established by "use" through PA 283 of 1909.
- Not formally dedicated to public use nor by instrument to a public entity.

TRADITIONAL ROAD RIGHT-OF-WAY INSTITUTIONAL CONTROLS FOR CLOSURE

➤ Restrictive Covenant

- Land or resource use (deed) restriction required under Part 201 and Part 213 of the NREPA.
- Must be recorded with the register of deeds for the county in which the property is located.

➤ Road Dedication Letter

- Road owned by a local unit of government.
- May only be used to prohibit exposure to groundwater contamination via the drinking water pathway.

➤ MDOT Environmental License Agreement

- When environmental contamination is proposed to remain in place on MDOT controlled property.

GOALS OF NEW ALTERNATE INSTITUTIONAL CONTROL FORM

- Address both groundwater and soil contamination.
- Inform all affected property interests.
- Foster completion of remedial or corrective actions.
 - Support redevelopment projects and community growth.
- Ensure that contamination within a road right-of-way is appropriately managed and exposure risks are controlled.

IMPORTANCE AND BENEFITS OF NEW FORM TO LOCAL ROAD RIGHT-OF-WAY AUTHORITIES

- Provide consistent and adequate information for LUG or authority to make an informed decision whether to accept and manage risks due to contamination present within a right-of-way.
- Inform LUG or authority when planning and performing construction projects, including worker safety and exposure control.
- Allow opportunity for LUG or authority to require additional information, permits, license agreements or financial bonding as needed.
- Identifies LUG's or authority's role in managing exposure risks but does not itself cause the LUG or authority to be liable under Part 201 or Part 213.

DESIGN OF FORM



- Detailed cover instruction page.
- 3 pages of required information.
- Form contains 5 sections to complete.

ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

Cover Instruction Page

OVERVIEW OF COVER INSTRUCTION PAGE

INSTRUCTIONS:

When environmental contamination is proposed to remain in place under a road right-of-way (ROW) owned or controlled by a local unit of government (LUG), tribal government, or other authority, except the Michigan Department of Transportation, the "Road Right-of-Way Alternate Institutional Control" form (Form) may serve as an alternate institutional control mechanism pursuant to Section 20114d(5)(a) of Part 201, Environmental Remediation, or Section 21310a(4) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). Acceptance of this institutional control by the LUG or other ROW authority is discretionary and voluntary. This Form replaces the Road Dedication Letter, which is no longer accepted as an approved institutional control.

The submitter is responsible for identifying property ownership interests, subject to documentation available on public record, associated within the ROW. In addition to this Form, if the submitter determines that the LUG or other ROW authority controls the ROW through an easement, the submitter may need to obtain consent from any underlying property owners who own fee simple title under the ROW and should consider recording restrictive covenants for adjacent properties. However, the restrictive covenants need not apply to the property underlying the ROW. Furthermore, the LUG or other ROW authority may require approval of certain permits, license agreements, or financial bonding that may be necessary for the ROW prior to submission of this alternate institutional control.

Documentation that all relevant exposure pathways have been evaluated and that there are no other potential exposures above unrestricted residential criteria within the ROW must be provided to the Department of Environmental Quality as part of a Response Activity Plan or No Further Action Report pursuant to Part 201 or a Final Assessment Report or Closure Report pursuant to Part 213 of the NREPA.

ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

Form Instructions Box

FORM INSTRUCTIONS

INSTRUCTIONS: *The party proposing to use the road ROW as an alternate institutional control (IC) shall complete Sections 1 through 4. If any underlying fee simple title ownership interests exist in the affected ROW, the submitter shall obtain consent, as appropriate, of all parties in Section 3. The LUG, tribal government, or other authority who owns or controls the ROW, except the Michigan Department of Transportation, shall complete Section 5. The party proposing shall submit the completed form and all attachments with a Response Activity Plan or No Further Action Report pursuant to Part 201 or a Final Assessment Report or Closure Report pursuant to Part 213 to the appropriate District Office. See DEQ form EQP4410 at www.michigan.gov/DEQrrd Office Map for a complete list of RRD District and Field Offices. The MDEQ Reference Number can be obtained by contacting the Remediation and Redevelopment Division at deq-rrd@michigan.gov or by calling 517-284-5153.*

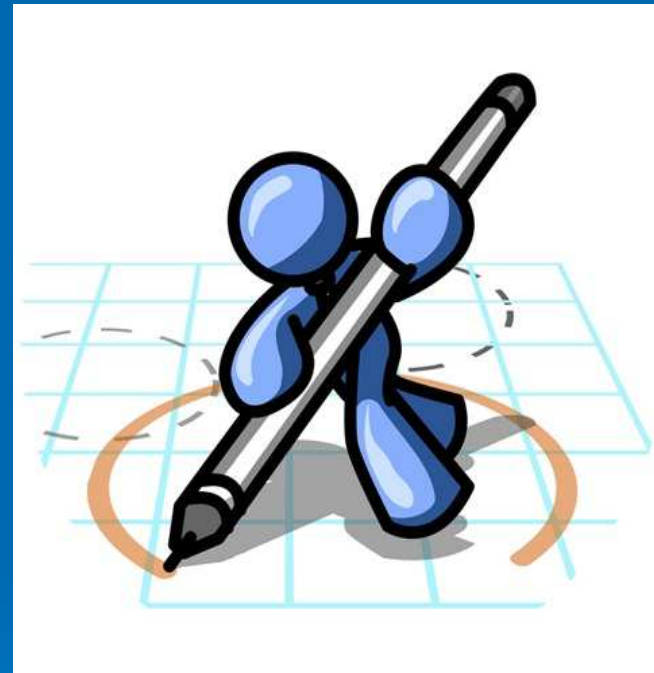
ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

Section 1 – Submitter Information

SECTION 1 – SUBMITTER INFORMATION

➤ Purpose:

- Obtain information used to identify:
 - The submitter's information.
 - The location of the road right-of-way.
 - Other internal tracking information.



SECTION 1 – SUBMITTER INFORMATION

➤ Requirements:

SECTION 1. SUBMITTER INFORMATION:		MDEQ REFERENCE NUMBER: <input type="text"/>	
SITE OR FACILITY NAME: <input type="text"/>		SITE OR FACILITY ID NUMBER: <input type="text"/>	
STREET ADDRESS: <input type="text"/>			
CITY: <input type="text"/>	ZIP: <input type="text"/>	COUNTY: <input type="text"/>	
NAME OF PARTY PROPOSING ROW IC: <input type="text"/>		EMAIL ADDRESS: <input type="text"/>	
STREET ADDRESS: <input type="text"/>	CITY: <input type="text"/>	STATE: <input type="text"/>	ZIP: <input type="text"/>
CONTACT PERSON: <input type="text"/>	PHONE: <input type="text"/>	FAX: <input type="text"/>	
DEQ District Office: <input type="checkbox"/> Cadillac <input type="checkbox"/> Gaylord <input type="checkbox"/> Grand Rapids <input type="checkbox"/> Jackson <input type="checkbox"/> Kalamazoo <input type="checkbox"/> Lansing <input type="checkbox"/> Saginaw Bay <input type="checkbox"/> SE Michigan <input type="checkbox"/> Upper Peninsula			

ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

Section 2 – Affected Road Right of Way Information

SECTION 2

AFFECTED ROAD RIGHT OF WAY INFORMATION

➤ Purpose:

- Describe and document the environmental conditions, and exposure risks present.
- Identify other affected property interests (ownership, easements, etc.)
- Provide a drawing that describes the subject property.

SECTION 2

AFFECTED ROAD RIGHT OF WAY INFORMATION

➤ Questions 1-3

1. Location/description of affected ROW:	<input type="text"/>		
2. Known or Suspected Contaminant(s) Type (Check all that apply):			
<input type="checkbox"/> Petroleum	<input type="checkbox"/> Volatile Organic Compounds	<input type="checkbox"/> Metals	<input type="checkbox"/> Other
3. Is residual/mobile NAPL present: <input type="checkbox"/> YES <input type="checkbox"/> NO			

SECTION 2

AFFECTED ROAD RIGHT OF WAY INFORMATION

➤ Questions 4-6

4. Media Contaminated:

- a. ☐ Soil Depth to contaminated soil:
- b. ☐ Groundwater Depth to contaminated groundwater: Predominant groundwater flow direction:

5. Contamination present within ROW construction/excavation zone: ☐ YES ☐ NO

6. Presence of utilities in affected ROW: ☐ YES ☐ NO

If present, show the location, depth and cross section of each utility on a Scaled Drawing (see #10)

Impact to stormwater system: ☐ YES ☐ NO

Impact to stormwater permit and discharge limits: ☐ YES ☐ NO

Is the stormwater system classified as a Municipal Separate Storm Sewer System (MS4): ☐ YES ☐ NO

SECTION 2

AFFECTED ROAD RIGHT OF WAY INFORMATION

➤ Questions 7-8

7. Have all affected easement holders in ROW received notification of existing conditions: ☐ YES ☐ NO

8. Does the ROW have any underlying fee simple title ownership interests: ☐ YES ☐ NO

If yes, consent of underlying fee title holders obtained (see Section 3) to the use of this institutional control: ☐ YES ☐ NO

SECTION 2

AFFECTED ROAD RIGHT OF WAY INFORMATION

➤ Questions 9 – 9.a.

9. Exposure risks present: ☐ Drinking Water ☐ Direct Contact ☐ Inhalation ☐ Soil Excavation/Relocation

- a. Based on the exposure risks identified above, insert a paragraph below which describes the affected media, the nature and extent of the hazardous substances, the cleanup criteria exceeded, the routes of potential exposure, any response activities that have been taken to address the contamination, and any activities that could result in exposure to hazardous substances that would cause this alternate institutional control to not be protective of public health, safety, and welfare (e.g. use of the groundwater for consumption, irrigation, or any other use; any excavation or intrusive activity that would result in contaminated soils to be placed at the ground surface or otherwise exacerbate the extent of contamination). See example language below.

SECTION 2

AFFECTED ROAD RIGHT OF WAY INFORMATION

➤ Question 9.a. continued

9.a. continued



Example language if contaminated groundwater is an exposure risk and construction activities would require dewatering or management of groundwater:

Management and disposal of the groundwater for short-term dewatering for construction purposes should be conducted in accordance with all applicable local state, and federal laws and regulations and in a manner that does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.

Example language if contaminated soil is an exposure risk and construction activities would require soil excavation, relocation and/or disposal:

Management of all contaminated soils, media and/or debris located in the road right-of-way shall be in accordance with the applicable requirements of Section 20120c or Section 21304b of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

SECTION 2

AFFECTED ROAD RIGHT OF WAY INFORMATION

➤ Questions 10-11

10. ☐ Provide a Scaled Drawing and Property Description, or survey if available, that describes the subject property, obtained from a title commitment or vesting deed. At a minimum, the Scaled Drawing should include:
- A north arrow.
 - A graphical scale bar and scale statement (i.e. 1"=50').
 - The limits of the property plotted, to scale, showing the relationship to LUG or other Authority ROW.
 - The transportation corridor name identified.
 - A statement identifying the Township, Range, Section, and Quarter Section where the parcel is located.
 - The limits of the area of impact plotted to scale. This area should be hatched and labeled appropriately.
 - The location of significant site features such as buildings, drives, parking lots, and road surface.
 - Cross section illustrating affected Right-of-Way, media, utilities and distribution of contaminated media.
 - Most-recent analytical data illustrating contaminant compounds and concentrations within contaminated media.

11. Were permanent markers required to be placed within ROW: ☐ YES ☐ NO

ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

Section 3 - Consent of Fee Simple Title Owner, If Applicable

SECTION 3

CONSENT OF FEE SIMPLE TITLE OWNER, IF APPLICABLE

➤ Purpose:

- Provide fee simple title ownership information underlying the road right-of-way.

SECTION 3

CONSENT OF FEE SIMPLE TITLE OWNER, IF APPLICABLE

➤ Requirements

SECTION 3. CONSENT OF FEE SIMPLE TITLE OWNER, IF APPLICABLE:			
I, as the underlying fee simple title owner, do hereby consent to the use of this alternate institutional control and that the aforementioned Local Unit of Government, tribal government, or other authority is exercising its authority to assure the reliability of this alternate institutional control to prevent exposure to hazardous or regulated substances located below the road surface.			
		■	■
Signature	Print	Property Identification #	Date
		■	■
Signature	Print	Property Identification #	Date
		■	■
Signature	Print	Property Identification #	Date
		■	■
Signature	Print	Property Identification #	Date

ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

Section 4 – Submitter Signature

SECTION 4

SUBMITTER SIGNATURE


➤ Purpose:

- Verifies that the submitter has accurately completed all requirements of the form.
- Submitter confirms no alterations to the form's standard language.

SECTION 4

SUBMITTER SIGNATURE

➤ Requirements:

SECTION 4. SUBMITTER SIGNATURE:		
I hereby attest to the accuracy of the statements in this document and all attachments. I further certify that the language on this form has not been modified.		
		
Signature	Print	Date

ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

Section 5 – LUG or other Authority Confirmation of Road Right-of-Way Institutional Control

SECTION 5

LUG OR OTHER AUTHORITY CONFIRMATION OF ROAD RIGHT-OF-WAY INSTITUTIONAL CONTROL

➤ Purpose:

- State the LUG, tribal government or other authority's rights and responsibilities in confirming the use of the road right-of-way institutional control created by the DEQ.

SECTION 5

LUG OR OTHER AUTHORITY CONFIRMATION OF ROAD RIGHT-OF-WAY INSTITUTIONAL CONTROL

➤ Breakdown confirmation language

Name of Local Unit of Government or other Authority:

The aforementioned Local Unit of Government (LUG), tribal government, or other authority attests that the current use of the affected road right-of-way is for public transportation. The LUG, tribal government, or other authority has no current plans to relocate, vacate, or abandon the affected portion of the affected road right-of-way. The LUG, tribal government, or other authority understands that the submitter intends to rely upon the existence of said road right-of-way to prevent unacceptable exposure to hazardous substances that may be present in the soil and/or groundwater within the affected road right-of-way. The LUG, tribal government, or other authority understands that there may be additional costs to the LUG, tribal government, or other authority when disturbing the area of impact in the future. The LUG, tribal government, or other authority has a reliable mechanism to track the location and will provide notification of the contamination in the affected road right-of-way to parties requesting access.

SECTION 5

LUG OR OTHER AUTHORITY CONFIRMATION OF ROAD RIGHT-OF-WAY INSTITUTIONAL CONTROL

➤ Breakdown confirmation language

The LUG, tribal government, or other authority executing this alternate institutional control certifies that EITHER of the following conditions has been met:

a. based on representations of the submitter, all/any persons with ownership interests in the property/properties underlying the affected right-of-way described in this document have been notified regarding the conditions that are known at the time this alternate institutional control is executed, and consent for use of this alternate institutional control from fee simple title ownership interests has been obtained where necessary.

-OR-

b. the LUG, tribal government, or other authority exercises exclusive control over the roadway and underlying properties affected by this alternate institutional control and is exercising its authority to assure the reliability of this alternate institutional control to prevent exposure to hazardous or regulated substances located below the road surface.

SECTION 5

LUG OR OTHER AUTHORITY CONFIRMATION OF ROAD RIGHT-OF-WAY INSTITUTIONAL CONTROL

➤ Breakdown confirmation language

If the affected road right-of-way is proposed to be relocated, vacated or abandoned, the LUG, tribal government, or other authority will notify the appropriate Department of Environmental Quality District Office, identified in Section 1, and any adjacent/underlying property owners no less than 90 days prior to the road being relocated, vacated, or abandoned. With my signature below, I certify that I am legally authorized to sign on behalf of the LUG, tribal government, or other authority.

Signature of Authorized LUG or Authority Official	Print Authorized LUG or Authority Official	Date
Name of Local Unit of Government	Address, City, State, Zip	
Phone Number	Fax Number	Email Address

SUMMARY

- Streamlines road right-of-way institutional control process by addressing both groundwater and soil contamination in a single document.
- Provides beneficial information for LUG or authority to make an informed decision whether to accept and manage risks due to contamination present within a right-of-way under their control.
- Assists in completion of remedial/corrective actions.
- Ensure that contamination within a road right-of-way is appropriately managed and exposure risks are controlled.

FOR MORE INFORMATION

- Please send any comments, via email, to schremsk@michigan.gov. The closing date for comments is January 17, 2013.
- Contact information for the appropriate DEQ Office location can be found on the DEQ Remediation and Redevelopment Division's web site:

www.michigan.gov/deqrrd

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QUESTIONS?

Wrap Up

- Recording
- Handout
- Evaluation
- CEHs for Professional Engineers

Upcoming Events

- Introduction to Hazardous Waste Webinar Series – January
- Introductino to MAERS Workshops – Jan/Feb
- SARA Title III Workshops – Jan/Feb

www.michigan.gov/deqworkshops